



## **OFFICE OF MANAGEMENT AND BUDGET**

### **Office of Federal Procurement Policy**

#### **48 CFR Part 9904**

#### **Cost Accounting Standards: CAS 413 Pension Adjustments for Extraordinary Events**

**AGENCY:** Office of Management and Budget, Office of Federal Procurement Policy, Cost Accounting Standards Board

**ACTION:** Notice

**SUMMARY:** The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is conducting fact-finding for the development of a Staff Discussion Paper (SDP) on CAS 413 Pension Adjustments for Extraordinary Events. This is the first step in a four-step process that may result in a final rule. As part of these efforts, the public is invited to attend two public meetings that are scheduled for July 31, 2013 and August 14, 2013. To facilitate fact-finding, the CAS Board encourages the submission of written comments for consideration in the drafting of the SDP.

#### **DATES:**

***Registration date for public meetings:*** Advance registration for the public meetings via email must be submitted by 5:00 PM (Eastern Standard Time), July 29 (for the July 31, 2013 meeting) and August 12 (for the August 14, 2013 meeting). Please follow the procedures at “Advance Registration for the Public Meetings.”

***Comment date:*** Comments must be in writing and must be submitted by [ **insert date that is 60 days from FR publication date** ].

## **PUBLIC MEETINGS FOR FACT-FINDING:**

### ***Dates of public meetings:***

-Wednesday, July 31, 2013, 8:30 am – 12:30 pm

-Wednesday, August 14, 2013, 8:30 am – 12:30 pm

## **ADDRESSES:**

### ***Site of public meetings:***

The Offices of the Professional Services Council

4401 Wilson Blvd, Suite 1110

Arlington, VA 22203

For directions, see:

[http://www.pscouncil.org/i/a/Directions\\_to\\_PSC/c/a/Directions\\_to\\_PSC.aspx?hkey=631433d0-29e9-4cc5-b438-419a7891e6bd](http://www.pscouncil.org/i/a/Directions_to_PSC/c/a/Directions_to_PSC.aspx?hkey=631433d0-29e9-4cc5-b438-419a7891e6bd)

## **ADVANCE REGISTRATION FOR PUBLIC MEETINGS:**

To advance register for the public meeting, submit your name, title, organization, postal address, telephone number, and email address in an email to [casb2@omb.eop.gov](mailto:casb2@omb.eop.gov) with “Registration – CAS 413 adjustments for extraordinary events” in the subject line. To ensure seating due to space constraints, potential attendees of the public meetings are strongly encouraged to register in advance for the public meetings. Please register by no later than 5:00 PM on either July 29 for the July 31, 2013 meeting, or August 12 for the August 14, 2013 meeting. Attendees will be sent email confirmation of their attendance for seating purposes by the day prior to the meeting. If

the number of registrants exceeds the seating capacity, priority will be given to the registrants on the basis of the date of registration while considering the need for broad industry representation at the meeting. Participants who attend the meetings without an advance registration will not be assured of seating, or attendance if the maximum room capacity is reached.

#### **ADDRESSES FOR SUBMISSION OF COMMENTS:**

All comments to this notice must be in writing. In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments. Attendees to the public meetings are encouraged to submit written comments in writing so that their comments can be given due consideration. Electronic comments may be submitted in any one of three ways:

1. *Federal eRulemaking Portal:* Comments may be submitted via <http://www.regulations.gov> – a Federal E-Government website that allows the public to find, review, and submit comments on issues that agencies have published in the *Federal Register*, and that are open for comment. Simply type “Fact-finding – CAS 413 adjustments for extraordinary events” (without quotation marks) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;
2. *Email:* Comments may be included in an email address sent to [casb2@omb.eop.gov](mailto:casb2@omb.eop.gov). The comments may be submitted in the text of the email message or as an attachment. Type “Fact-finding – CAS adjustment for extraordinary events” in the subject line.
3. *Facsimile:* Comments may also be submitted by facsimile to (202) 395-5105. Type “Fact-finding – CAS adjustment for extraordinary events” on the coversheet; or

4. *Mail:* If you choose to submit your responses via regular mail, please address them to:

Office of Federal Procurement Policy, 725 17<sup>th</sup> Street, NW, Room 9013, Washington, DC 20503, ATTN: Raymond J. M. Wong. Due to delays caused by the screening and processing of mail, respondents are strongly encouraged to submit responses electronically.

Be sure to include your name, title, organization, postal address, telephone number, and email address in the text of your comments and reference “Fact-finding – CAS adjustment for extraordinary events” in the subject line irrespective of how you submit your comments.

Comments received by the date specified in this notice will be included as part of the official record. Comments delayed due to use of regular mail may not be considered.

Please note that all public comments received will be available in their entirety at

[http://www.whitehouse.gov/omb/casb\\_index\\_public\\_comments/](http://www.whitehouse.gov/omb/casb_index_public_comments/) and

<http://www.regulations.gov> after the close of the comment period. Accordingly, you should not include any information that you would object to being disclosed.

**FOR FURTHER INFORMATION CONTACT:** Raymond J. M. Wong, Director, Cost

Accounting Standards Board (telephone: 202-395-6805; email: [Raymond\\_wong@omb.eop.gov](mailto:Raymond_wong@omb.eop.gov)).

## **SUPPLEMENTARY INFORMATION**

### **A. Regulatory Process – Changes to 48 C.F.R. Part 9904**

Rules, regulations, and standards issued by the CAS Board are codified at 48 C.F.R. Chapter 99. This notice addresses fact-finding for the development of a Staff Discussion Paper (SDP) on CAS 413 Pension Adjustments for Extraordinary Events. CAS 413 is a Standard, and as such is subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c). The process that may ultimately culminate in a final rule generally consists of the following four steps:

1. Prior to the adoption of a proposed Standard, consult with interested persons in fact-finding concerning the following: the probable costs of implementation compared to the probable benefits; advantages, disadvantages and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, Government contracts; and the scope of, and alternatives available to, the action proposed to be taken;
2. Prepare and publish a SDP based on the results of the fact-finding for comments;
3. Promulgate an Advance Notice of Proposed Rulemaking for comments; and
4. Promulgate a Notice of Proposed Rulemaking for comments.

Fact-finding for the development of the SDP, the subject of this notice of public meetings, is the first step in a four-step statutory rulemaking process that may ultimately culminate in a final rule with respect to a Standard.



## **B. Background and Summary**

In response to the Notice of Proposed Rulemaking (NPRM) on pension harmonization (the CAS Pension Harmonization Rule, 75 FR 25982, May 10, 2010), the CAS Board received public comments expressing concerns that 48 C.F.R. 9904.413-50(c)(12) (otherwise known as CAS 413-50(c)(12)) on segment closings was not being revised to harmonize with the Pension Protection Act of 2006 (PPA) (Pub. L. 109-280, 120 Stat. 780). When the CAS Pension Harmonization Rule was published as a Final Rule (76 FR 81296, December 27, 2011), the CAS Board summarized and responded to these comments under Topic 10, “Segment Closings and Benefit Curtailments.” The CAS Board stated that it limited the amendment of 9904.413-50(c)(12) provisions in the CAS Pension Harmonization Rule to the exemption of benefit curtailments mandated by the Employee Retirement Income Security Act of 1974 (ERISA) by 26 U.S.C. 436. The CAS Board explained that other issues and problems with the current CAS segment closing and benefit curtailment provisions were beyond the scope of pension harmonization required by paragraph (d) of section 106 of the PPA, and should be addressed in a separate case. The CAS Board established a Working Group (WG) on pension adjustments for extraordinary events to support its consideration of revisions to CAS 413. The WG, comprised of the staff and subject matter experts from the Departments of Defense (DOD), Energy (DOE), Health and Human Services (HHS), the National Aeronautical Space Administration (NASA), and the Pension Benefit Guaranty Corporation (PBGC), has been tasked by the CAS Board to frame and evaluate issues, and develop options to address them. The CAS Board has directed the staff, supported by the WG, to conduct fact-finding in order to develop a Staff Discussion

Paper for the CAS Board's consideration.

Subsequently, the General Accountability Office (GAO) observed that the CAS Board did not harmonize the discount rates used for settling up if a contractor curtails a pension plan. This means that liabilities could be calculated differently under ERISA and CAS rules if a contractor terminates a plan or freezes new benefit accruals for all participants. GAO recommended that the CAS Board set a schedule for revising the part of CAS 413 dealing with the settlement of pension plan curtailments (in GAO-13-158, "PENSION COSTS ON DOD CONTRACTS – Additional Guidance Needed to Ensure Costs are Consistent and Reasonable," dated January 2013). The CAS Board reviewed the report, and advised GAO that its tasking to the WG generally addresses the GAO recommendation. In addition, the CAS Board Chair advised Congress that while the CAS Board has begun the fact-finding step of the four-step CAS rulemaking process, it has not yet set a schedule as there are a number of factors that may affect timing, such as the extent and complexity of comments received in response to the SDP, that make a set schedule too speculative at this time.

The staff, supported by the WG, has begun research on the subject matter. The CAS Board has authorized the WG to consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of a possible amendment to the Standards, specifically CAS 412 and 413.

In addition to potential revisions to 9904.413-50(c)(12), the WG has identified other CAS 412 and 413 provisions that are potentially directly impacted by revisions to CAS 413-50(c)(12).



These provisions include:

- 412-50(c)(2)(ii) Assignable Cost Credits,
- 413-50(c)(3) Pension Plan Merger or Spin-Off,
- 413-50(c)(5) Initial Allocation of Plan Assets,
- 413-50(c)(8) Participant Transfers Between Segments, and
- 413-50(c)(9) Inactive Segments.
- Definitions of Segment Closing and Benefit Curtailment
- CAS 412-50(b)(7) Minimum Actuarial Liability

### **C. Issues to Consider Relative to CAS 413 Pension Adjustments for Extraordinary Events**

To focus the fact-finding to address CAS 413 pension adjustments for extraordinary events with any revisions to CAS 413-50(c)(12) and associated provisions, the WG has prepared a series of topical questions for the consideration of interested parties in the development of their comments on the subject matter. The WG will consider all comments germane to its tasking from the CAS Board, i.e., CAS 413 pension adjustments for extraordinary events, and not just the comments responding to the list of scenarios and questions, in drafting the SDP. Comments that are deemed by the WG to be outside the scope of the CAS Board's tasking to the WG will not be considered in developing the SDP. The format of this list of questions presents a scenario based on a CAS subsection, paragraph or subparagraph followed by a series of questions on the

scenario. The order of the scenarios and questions does not imply any assessment of their relative importance by the CAS Board or WG.

**1. Issues related to CAS 413-50(c)(12):** If a segment is closed, if there is a pension plan termination, or if there is a curtailment of benefits, the contractor shall determine the difference between the actuarial accrued liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The difference between the market value of the assets and the actuarial accrued liability for the segment represents an adjustment of previously-determined pension costs.

- a) Should all benefit curtailments be excluded?
- b) The original promulgation of CAS 413 implemented adjustments for large actuarial gains from “abnormal forfeiture.” The 1995 amendments introduced the concept of a true-up of assets and liabilities. What should be the purpose of this provision in the future?
- c) There are few plans with benefit formulas based on final pay. Qualified plans can no longer have significant delays for vesting. Is the concept of an “abnormal forfeiture” still valid?
- d) Assets and liabilities were accumulated across many years and market environments and cycles – Is a “mark-to-market” true-up still appropriate?

**2. Issues related to CAS 413-50(c)(12)(i):** The determination of the actuarial accrued liability shall be made using the accrued benefit cost method. The actuarial assumptions employed shall be consistent with the current and prior long term assumptions used in the measurement

of pension costs. If there is a pension plan termination, the actuarial accrued liability shall be measured as the amount paid to irrevocably settle all benefit obligations or paid to the Pension Benefit Guarantee Corporation (PBGC). How should the actuarial accrued liability be measured for the following conditions:

- a) If the Minimum Actuarial Liability is greater than accrued benefit cost method liability in the period the segment closing occurs?
- b) If benefit obligation is settled by payment of lump sums and/or annuity?
- c) If there are “changed conditions” due to segment closing, i.e., is the retirement assumption still valid?
- d) If there have been prior mergers, spin-offs or other reorganizations?
- e) If liabilities were accumulated across many years and market environments/cycles – Is a “mark-to-market” true-up still appropriate?

**3. Issues related to CAS 413-50(c)(12)(ii):** In computing the market value of assets for the segment, if the contractor has not already allocated assets to the segment, such an allocation shall be made in accordance with the requirements of paragraphs (c)(5)(i) and (ii) of this subsection [i.e., CAS 413-50]. The market value of the assets shall be reduced by the accumulated value of prepayment credits, if any. Conversely, the market value of the assets shall be increased by the current value of any unfunded actuarial liability separately identified and maintained in accordance with CAS 412-50(a)(2).

- a) How should CAS 413-50(c)(5) handle the lack of historical records on plan contributions, benefits and earnings (see *Teledyne, Inc. v. U.S.*, 50 Fed. Cl. 155 (2001), *aff'd sub nom*, 316 F.3d 1366 (Fed. Cir. 2003))? In other words, what if there are incomplete, inadequate, or lost historical records because adequate detailed records were NOT kept for some period of time during the life of the segment?
- b) What if there have been prior mergers, spin-offs or other reorganizations that cause tracing the segment's legacy difficult?
- c) Assets were accumulated across many years and market environments and cycles – Is a “mark-to-market” true-up still appropriate?

**4. Issues related to CAS 413-50(c)(12)(iii):** The calculation of the difference between the market value of the assets and the actuarial accrued liability shall be made as of the date of the event (e.g., contract termination, plan amendment, plant closure) that caused the closing of the segment, pension plan termination, or curtailment of benefits. If such a date is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

- a) Does the CAS Board need to address the intent or use of the phrase: “if its use can result in an inequitable calculation?”

**5. Issues related to CAS 413-50(c)(12)(iv):** Pension plan improvements adopted within 60 months of the date of the event which increase the actuarial accrued liability shall be recognized on a prorata basis using the number of months the date of adoption preceded the

event date. Plan improvements mandated by law or collective bargaining agreement are not subject to this phase-in.

- a) What about automatic Internal Revenue Code (IRC) sections 415 (Limitations on benefits and contribution under qualified plans) and 401(a)(17) (Compensation limit) improvements?
- b) What about “prudent” benefit improvements and how could “prudent” be determined?
- c) What if a plan is replaced by a new defined benefit plan or replacement defined benefit plan?

**6. Issues related to CAS 413-50(c)(12)(v):** If a segment is closed due to a sale or other transfer of ownership to a successor in interest in the contracts of the segment and all of the pension plan assets and actuarial accrued liabilities pertaining to the closed segment are transferred to the successor segment, then no adjustment amount pursuant to this paragraph (c)(12) is required. If only some of the pension plan assets and actuarial accrued liabilities of the closed segment are transferred, then the adjustment amount required under this paragraph (c)(12) shall be determined based on the pension plan assets and actuarial accrued liabilities remaining with the contractor. In either case, the effect of the transferred assets and liabilities is carried forward and recognized in the accounting for pension cost at the successor contractor.

- a) What happens when the actual assets transferred are not based on the assets accumulated and accounted for under CAS 412 and 413, i.e., assets transfers based on IRC 414(l)

(Merger and consolidation of plans or transfers of plan assets) or the negotiated sales agreement?

- b) How should you handle the difference between the transferred assets and the assets allocated to the segment under CAS 413?
- c) If the segment is partially sold and partially retained, how are the plan assets and liabilities accounted for? Does the CAS Board need to address how plan assets and liabilities are divided and transferred?
- d) Should the provisions on applicable interest rate used for CAS 413-50(c)(12)(i) purposes reflect whether the contractor has retained the plan liability or settled the liability?

**7. Issues related to CAS 413-50(c)(12)(vi):** The Government's share of the adjustment amount determined for a segment shall be the product of the adjustment amount and a fraction. The adjustment amount shall be reduced for any excise tax imposed upon assets withdrawn from the funding agency of a qualified pension plan. The numerator of such fraction shall be the sum of the pension plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the pension plan. The denominator of such fraction shall be the total pension costs assigned to cost accounting periods during those same years. This amount shall represent an adjustment of contract prices or cost allowance as appropriate. The adjustment may be recognized by modifying a single contract, several but not all contracts, or all contracts, or by use of any other suitable technique.

- a) How should the lack of historical accrued and allocated cost data be handled?
- b) What if there have been prior mergers, spin-offs or other reorganizations?

**8. Issues related to CAS 413-50(c)(12)(vii):** The full amount of the Government's share of an adjustment is allocable, without limit, as a credit or charge during the cost accounting period in which the event occurred and contract prices/costs will be adjusted accordingly. However, if the contractor continues to perform Government contracts, the contracting parties may negotiate an amortization schedule, including interest adjustments. Any amortization agreement shall consider the magnitude of the adjustment credit or charge, and the size and nature of the continuing contracts.

- a) If the contractor has other cost-based contracts how is the adjustment credit recognized in future cost accounting periods? Should the contractor create prepayment credit equal to the gross adjustment credit amount?
- b) If the contractor has other cost-based contracts how is the adjustment debit recognized in future cost accounting periods? Should the contractor create an unfunded accrual equal to the gross adjustment charge amount?
- c) What if adjustment is paid into or out of the pension fund?

**9. Issues related to CAS 413-50(c)(12)(viii):** If a benefit curtailment is caused by a cessation of benefit accruals mandated by ERISA based on the plan's funding level, then no adjustment for the curtailment of benefit pursuant to this paragraph (c)(12) is required.

Instead, the curtailment of benefits shall be recognized as follows:

- (A) If the written plan document provides that benefit accruals are nonforfeitable once employment service has been rendered and shall be retroactively restored if and when the



benefit accrual limitation ceases, then, the contractor may elect to recognize the expected benefit accruals in the actuarial accrued liability and normal cost during the period of cessation for the determination of pension cost in accordance with the provisions of CAS 412 and 413.

(B) Otherwise, the curtailment of benefits shall be recognized as an actuarial gain or loss for the period. The subsequent restoration of missed benefit accruals shall be recognized as an actuarial gain or loss in the period in which the restoration occurs.

- a) Now that the CAS Pension Harmonization Rule been in effect for over a year, have there been any issues related to this subparagraph?

**10. General Questions:** Besides the questions raised concerning specific provisions within CAS 413-50(c)(12), the staff has identified a few general questions.

- a) Should the CAS Board eliminate CAS 413-50(c)(12) in its entirety, i.e., is this provision still needed?
- b) Should the CAS Board consider special issues related to CAS 413-50(c)(12) when short, non-repetitive contracts (e.g., 5-years) are awarded? Should such contracts be subject to CAS 413-50(c)(12)?
- c) Should the CAS Board amend CAS 412-50(c)(2)(ii) to allow an Assignable Cost Limitation “buffer” to better ensure that the plan or segment has adequate resources in case of segment closings, plan terminations or sudden market declines?

- d) If the CAS Board continues to require a “true-up” of assets and liabilities or permits an Assignable Cost Limitation Buffer, should the CAS Board remove the CAS 412-50(c)(2)(i) \$0 floor and permit negative pension costs instead?

Joseph G. Jordan  
Chair, Cost Accounting Standards Board

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